

On February 8, 2011 defendant Wilma Cox ("Cox) pled guilty to one count of theft of government property in violation of 18 U.S.C. § 641. Cox pled guilty pursuant to a Rule 11(c)(1)(C) plea agreement. This agreement provided for a sentence of three years probation, and payment by defendant of \$16,229.20 in restitution. On May 17, 2011 the Court sentenced defendant in accordance with the terms of the plea agreement.

At the sentencing, the government put forward for the first time the victim's request for pre-and post-judgment interest in accord with 18 U.S.C. §3612(f). Because defendant had not had an opportunity to address this request, the Court held the issuance of interest in abeyance pending briefing on that specific topic by the parties. The briefing has now been concluded and the Court finds the following on the issue of interest on the restitution.

The government asserts that pursuant to 18 U.S.C. § 3663A(c)(1) the victim is entitled to restitution for his loss, and that the Ninth Circuit has recognized that part of a victim's actual loss includes pre-judgment interest. United States v. Smith, 944 F.2d 618, 625-26 (9th Cir. 1991); see also

1 United States v. Catherine, 55 F.3d 1462, 1465 (9th Cir. 1995).

2 Defendant argues that as the plea agreement sets the
3 amount of restitution at \$16,229.20, the Court may not award
4 interest which would exceed that amount. However, the Ninth
5 Circuit has held that a victim is entitled to pre-judgment
6 interest. See United States v. Smith, 944 F.2d at 626.
7 ("[There] is no language in the Act that specifically allows or
8 forbids prejudgment interest. . .the Fifth Circuit ruled that
9 it was proper to include prejudgment interest in a restitution
10 award under the Act in order to fully compensate victims for
11 their losses. (Citation omitted) We agree with this analysis.")

12 The defendant began using the victim's funds on December
13 8, 2009 and the judgment was entered on May 17, 2011, so that
14 is the time period on which the government makes its
15 calculation of interest. The government proposes three
16 different interest calculations for the Court's consideration.

17 The first calculation uses the 5% interest rate requested
18 by the victim; the second option uses the Current Value of
19 Funds Rate which is commonly used in pre-judgment interest
20 calculations; and the third calculation uses the federal post-
21 judgment interest statute, 28 U.S.C. § 1961.

22 While there is authority in the Ninth Circuit to award
23 pre-judgment interest, United States v. Smith also stands for
24 the proposition that the district judge shall use his
25 discretion to consider, among other factors, the financial
26 resources of the defendant. Smith, 944 F.2d at 625. Having
27 considered all of the relevant factors before this Court, the
28

1 Court finds that pre-judgment interest shall be awarded
2 utilizing the rate set out in 28 U.S.C. § 1961, for a total
3 pre-judgment interest payment of \$67.70. The judgment shall
4 reflect this amount in addition to the \$16,229.20 of
5 restitution.

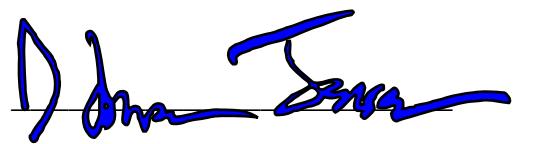
6

7

8 IT IS SO ORDERED.

9

10
11 Dated: July 1, 2011



D. Lowell Jensen
United States District Judge

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28